IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 95 of 2007

Date of Decision: May 4, 2007

Dharmender & ors. … Petitioners.

versus.

Bharat Sanchar Nigam & ors. . …Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner(s): M/s Vivek Thakur, B.C. Negi, Advocates.

For the Respondents) Mr. R.M.Bisht, Dy. Advocate General with Mr. J.S.Guleria, Law Officer, for respondents 1 & 2.

Mr. Lalit Sharma, Advocate vice Mr. H.S.Rawat, Advocate, for respondent No.3.

Deepak Gupta, J (Oral)

The petitioners before this Court are all contractors who have challenged a condition in the tender issued by respondent No.1 Bharat Sanchar Nigam (for short : BSNL) wherein one of the essential eligibility conditions is that the contractor should have experience of doing the work worth Rs. 15 lacs of laying Optical Fibre Cable construction in the last four financial years.

Shri B.C. Negi learned counsel for the petitioners has contended that as per the earlier policy of the BSNL, a person could be enrolled as Class –C contractor if he had done work worth Rs. 4 lacs during the previous two consecutive financial years. Similarly, a person could be eligible to be enlisted as

Class – D contractor in case he had done work worth Rs.5 lacs in the previous two financial years.

Our attention has also been drawn to the earlier tender issued on 5.6.2006 wherein the elgibility criteria was that all contractors who were having experience of laying Optical Fibre Cable construction works in BSNL or other approved works were eligible.

According to the petitioners, the earlier tender was issued in June, 2006 and between June and December, 2006 , the respondents have changed their eligibility criteria for the works of similar values and now the eligibility is that a person should have done work worth Rs.15 lacs in the last 4 years. It is also contended that there is no rationale behind fixing the figure of Rs. 15 lacs especially when most of the works have been advertised are of very low value ranging between Rs. 5lacs to Rs. 20 lacs, approximately.

What is the eligibility criteria of contractors is something which the department must decide. Unless the decision is arbitrary or irrational, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot interfere with the same.

No doubt, previously the criteria fixed was that for different classes of contractors, different indices were provided. For Class-C contractors, it was only required that they should have done the work worth Rs.10 lacs and for Class –D contractors, it was required that they should have done the work worth Rs.5 lacs in the last two consecutive financial years. This criteria was also changed lateron and the only eligibility criteria given in the tender issued in June, 2006 was that the contractors should have experience of laying optical fibre cable construction.

The respondents in their reply stated have that they have changed the condition regarding execution of the work by the contractors with a view to ensure that the persons who are executing the work should have sufficient experience and are also up-dated with the recent trend and technological advances.

We have considered the rival contentions of the learned counsel for the parties. In our considered view, the condition that only those contractors would be eligible who had done work worth more than Rs.15 lacs, for the last four consecutive financial years cannot be said to be an arbitrary or irrational decision. This condition only requires that over a period of four years, the contractors should have done work worth Rs. 15 lacs which comes to less than Rs.4 lacs in a year. Any contractor doing the work of such a nature should have some experience in the concerned field.

We, therefore, do not find that the condition imposed is either arbitrary or irrational. The petition is, accordingly, dismissed. Stay order stands vacated.

(Deepak Gupta), J.

May 4, 2007. (Surinder Singh),J.

s.